IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 25 OF 2003

Shri Angelo Costado
Fernandes, r/o Mallapur,
Churchwada, Karwar,
Karnataka. ... Applicant.

versus

STATE OF GOA. ... Respondent.

Mr. Rohit Bras de Sa, Advocate for the Applicant.

Mr. S. N. Sardessai, Public Prosecutor for the State.

CORAM: P. V. HARDAS, J.

DATED: 8TH AUGUST, 2003.

ORAL JUDGMENT

The Applicant/Accused who was convicted by the learned Judicial Magistrate, First Class, Canacona, by Judgment dated 31st October, 2001, in Criminal Case No.44/S/1997, for an offence punishable under Sections 279, 337, 304-A of the Indian Penal Code and sentenced to pay fine of Rs.500/- in default to undergo Simple Imprisonment for 10 days, to pay fine of Rs.300/- in default to undergo Simple Imprisonment for 5 days and Simple Imprisonment for 6 months respectively, confirmed by the Assistant

Sessions Judge, Margao, in Criminal Appeal No.42 /2001, by Judgment dated 27th May, 2003, has filed the present Criminal Revision Application assailing the aforesaid conviction and sentence.

2. The facts in brief as are necessary for the decision of this Criminal Revision Application are stated hereunder:-

P.W.10, Ratnakar Shirodkar, was attached to the Canacona Police Station in September, 1997. On 7th September, 1997, at about 5.50 p.m., he had received a telephone call from one Albert Fernandes informing him that at Bhatpal, Canacona, an accident had taken place between one jeep and a motorcycle. He was further informed that the motorcycle driver and the pillion rider were injured. On the basis of the said information, P.W.10, Ratnakar Shirodkar, registered M.V. Accident No.52/97 and proceeded to the scene of the accident. At the scene of the accident, he saw a jeep bearing registration No.GA-02-A-6508 on the left side of the road proceeding towards Canacona. The motorcycle bearing registration No.GDF 7157 was lying away from the spot of the accident. A Spot Panchanama at Exh.PW1/A came to be drawn in the presence of P.W.1, Sanjiv Naik. Both the vehicles were attached under the panchanama.

A message was received at the Canacona Police Station that the pillion rider named Vinod Chari had expired. An Inquest Panchanama of the deceased was conducted at Exh.PW4/A collly by P.W.4, Nelson Albuquerque. P.W.4, P.S.I. Nelson Albuquerque, then referred the dead body for port mortem at the hospital and the post mortem report is at Exh.PW4/A colly. P.W.10, Ratnakar Shirodkar, then lodged a complaint against the Applicant/Accused for an offence punishable under Sections 279, 337 and 304-A of the Indian Penal Code at Exh.PW10/B. The pillion rider was examined by P.W.8, Dr. Christopher D'Mello, who noticed the following injuries:-

1. Tenderness lumbar vertebrae, abrasions 4 in number, 1 x 1, 1 x 1/2 cm, .5 x .5 cm, 1 x 1/2 cm.

2. Injury caused by hard and rough object.

3. Abrasion 1 x 1/2 cm. on left first toe medially caused by hard and rough object.

4. Tenderness left tibia caused by hard and blunt object.

3. He accordingly issued the Hurt Certificate which is at Exh.PW8/A. Both the vehicles were examined by P.W.5, Mahesh Walke, an Inspector in the Regional Transport Office. He could not give any

opinion as regards the motorcycle. In the examination report, in respect of the jeep, he did not find anything adverse. The said reports are at Exh.PW5/A and PW5/B. After completion of the investigation, a charge-sheet against the Applicant/Accused for the aforesaid offences came to be filed.

4. The Applicant/Accused pleaded not guilty to the charge and claimed to be tried. The prosecution in support of its case examined 10 witnesses and the Applicant/Accused examined himself as D.W.1 and one Richard D'Souza as D.W.2.

5. P.W.2, Victor Fernandes, states that he was travelling in a jeep driven by the Applicant/Accused from Karwar to Margao. He states that at Partagal, while the jeep was proceeding towards Margao, a motorcycle came from the opposite direction and dashed against the jeep. The jeep was proceeding on the left side. The jeep was going up hill while the motorcycle was coming down hill. He has further stated that the accident occurred on account of the motorcycle driver who came and dashed against the jeep.

6. P.W.3, Putu Madhu Dessai, is the driver of

the motorcycle. He states that one Vinayak Chari was the pillion rider on the motorcycle. He states that on reaching Bhatpal as he was taking a left turn, a jeep came from the opposite direction in a fast speed and dashed against the motorcycle. Due to the dash, he and the pillion rider both fell down. He states that he sustained injuries on the left side of his leg and the pillion driver sustained injuries on his stomach. In the cross-examination, he has admitted that he is not a pilot by profession and does not have any driving licence. He states that he was driving motorcycles occasionally two years prior to the accident. He has further admitted that he was not aware that licence is necessary to drive on public roads. He has also admitted that till today, he was not having any driving licence. He has denied the suggestion that the accident has occurred due to the fact that he did not know how to drive a motorcycle.

7. P.W.6, Sandesh Dessai, states that he was a pillion rider on the scooter driven by P.W.9,Pramod Dessai. According to him, just before reaching Bhatpal, one jeep driven by the Applicant/Accused had overtaken their scooter and thereafter had dashed against the motorcycle coming from the opposite direction. According to him, at the time of the

accident, the scooter on which he was seated was at a distance of about 20 to 25 metres behind the jeep. In the cross-examination, he has admitted that he had not stated the speed of the jeep in his statement. He has further stated that P.W.9, Pramod Dessai who was driving the scooter was seated infront of him and P.W.9, Pramod Dessai is taller in height than him. An omission was brought out that he had not stated in his statement that the Applicant/Accused had come on the wrong side and had dashed the motorcycle.

8. P.W.9, Pramod Dessai, states that P.W.6, Sandesh Dessai, was the pillion rider of his scooter and the jeep driven by the Applicant/Accused had overtaken their scooter. He states that he had reached the spot of the accident 5 minutes later and did not see the accident. He has further stated that the width of the road at the accident spot is broad enough for two buses to pass. In the cross-examination, he has again reiterated that he had not witnessed the actual accident. He has further stated that the pillion driver(P.W.6) also did not witness the actual accident. According to him, they reached the accident spot soon thereafter.

9. The Applicant/Accused examined himself as D.W.1 and has stated that he was proceeding up hill

while the motorcycle was coming down hill. He has further stated that the motorcycle came from the wrong side and dashed against the jeep. He has further stated that the accident occurred on account of the fault of the motorcycle driver. In the cross-examination he has denied the suggestion that the speed of the jeep was 70 to 80 kms. per hour. D.W.2, Richard D'Souza, states that the motorcycle came at high speed from the opposite direction and the accident took place on account of the fault of the motorcycle driver and not due to the fault of the Applicant/Accused. In the cross-examination, he has admitted that his statement was not recorded by the Police though he was called at the Police Station. He has further stated that on 11th September, 1997, the Police had questioned him about the accident. There is nothing in the cross-examination to discredit what D.W.2 has stated.

10. The two Courts below have implicitly accepted the evidence of P.W.3 Putu Madhu Dessai, and have come to the conclusion that the Applicant/Accused was driving the jeep in a rash or negligent manner and, therefore, convicted and sentenced the Applicant/Accused as aforestated. The Courts below have also relied on the evidence of

P.W.6, Sandesh Dessai, as corroborating the evidence of P.W.3, Putu Madhu Dessai.

11. P.W.2, Victor Fernandes, has stated that the accident had taken place as a result of the motorcycle which was being driven at high speed in a rash or negligent manner. He has attributed the fault to the driver of the motorcycle and not to the Applicant/Accused. P.W.9, Pramod Dessai, has stated that he had reached the scene of the accident after 5 minutes of the accident. He has stated that he has not witnessed the accident. P.W.6, Sandesh Dessai, who was a pillion rider on the scooter driven by P.W.9, Pramod Dessai, obviously could not have witnessed the actual accident. P.W.9, Pramod Dessai, further states that neither he nor P.W.6, Sandesh Dessai, had witnessed the actual accident. Thus, the Court is left with the evidence of P.W.3, Putu Madhu Dessai, and P.W.2, Victor Fernandes. P.W.2, Victor Fernandes, obviously being the rider of the motorcycle would be keen in saving his own skin. Firstly, he does not possess a valid driving licence. Though, it is true that non possession of the driving licence would not necessarily in each and every case mean that the person does not know how to drive. However, the fact that he did not possess the driving licence should have put the Court on guard and the

Court should be cautious in placing reliance on the testimony of P.W.3, Putu Madhu Dessai. The evidence of P.W.2, Victor Fernandes, completely exonerates the Applicant/Accused. The prosecution had examined him as a witness. He was not declared hostile by the prosecution. There is nothing in his evidence which would lead the Court to come to a conclusion that the witness is either stating a falsehood or has exaggerated the incident. There is no material, in his evidence intrinsic in nature, to discard his evidence completely. When the prosecution case itself consists of two sets of witnesses the duty of the Court is then to separate the grain from the chaff and if such exercise is not possible then the Court has no option but to extend the benefit of doubt to the Accused. This is one of the case where the prosecution has examined P.W.2, Victor Fernandes and P.W.3, Putu Madhu Dessai, whose evidence is diametrically opposite. Since, there is nothing on record to disbelieve the evidence of P.W.2, Victor Fernandes, according to me, benefit of doubt ought to have been given to the Applicant/Accused. In fact, the evidence of P.W.2, Victor Fernandes, is on lines with the evidence of the Applicant/Accused and D.W.2 Richard D'Souza. No material has been brought out in the cross-examination of either the Applicant/Accused or D.W.2, Richard D'Souza to disbelieve their version

that the accident took place on account of the motorcycle being driven at high speed and dashing against the jeep. At any rate, this is a fit case where benefit of doubt ought to have been given to the Applicant/Accused. Both the Courts below have not addressed themselves on this aspect of the case which has necessitated an inference in revision by this Court. According to me, therefore, the Judgment of the two Courts below are wholly unsustainable.

12. In view of this, Criminal Revision Application No. 25 of 2003 is allowed. The Judgments of the two Courts below are hereby quashed and set aside. The conviction and sentence passed on the Applicant/Accused is hereby quashed and set aside. The Applicant/Accused is acquitted of the aforesaid offence. Fine if paid be refunded to the Applicant/Accused. Bail Bonds stand cancelled.

P. V. HARDAS, J.

RD.